

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 7th day of August, two thousand and six.

PRESENT:

HON. DENNIS JACOBS,
HON. ROBERT D. SACK,
HON. PETER W. HALL,
Circuit Judges.

Sukhvinder Kaur,

Petitioner,

v.

No. 03-40307-ag
NAC

Alberto R. Gonzales,¹ Attorney General,
Respondent.

FOR PETITIONER: Gell & Gell, New York, New York.

FOR RESPONDENT: Matthew G. Whitaker, United States Attorney, Gary L. Hayward,
Assistant United States Attorney, Des Moines, Iowa.

UPON DUE CONSIDERATION of this petition for review of a decision of the Board of

¹Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Alberto R. Gonzales is automatically substituted for former Attorney General John Ashcroft as a respondent in this case.

1 Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED, that the
2 petition for review is DENIED.

3 Sukhvinder Kaur, through counsel, petitions for review of the June 2003 BIA decision
4 denying her motion to reopen and reconsider its March 2003 decision affirming Immigration
5 Judge (“IJ”) Helen Sichel’s denial of her application for asylum, withholding of deportation, and
6 relief under the Convention Against Torture (“CAT”). We assume the parties’ familiarity with
7 the underlying facts and procedural history of the case.

8 A motion to reconsider must specify errors of fact or law in the BIA's decision and be
9 supported with pertinent authority. *See* 8 C.F.R. § 1003.2(b); *Ke Zhen Zhao v. U.S. Dep’t of*
10 *Justice*, 265 F.3d 83, 90 (2d Cir. 2001). In her motion, Kaur argued that the BIA failed to
11 consider her membership in a pro-Khalistani Sikh family when evaluating the IJ’s determination
12 regarding past persecution. Kaur claimed that she was targeted by the Hindu government of India
13 on account of her husband’s alleged affiliation with Sikh separatist groups. The IJ found that
14 Kaur failed to establish past persecution on account of one of the five protected grounds. The
15 BIA affirmed, noting that the record did not indicate that Kaur suffered harm on account of an
16 imputed political opinion or any other protected ground. This Court presumes that the agency
17 takes into consideration all evidence presented to it, *Xiao Ji Chen v. U.S. Dep’t of Justice*, 434
18 F.3d 144, 159 n.13 (2d Cir. 2006), and there is no indication that the BIA failed to consider her
19 claim that she was persecuted on account of her membership in a politically-active Sikh family.
20 The BIA thus did not abuse its discretion in denying the motion to reconsider.

21 A motion to reopen “asks that the proceedings be reopened for new evidence and a new
22 decision, usually after an evidentiary hearing.” *Zhao v. U.S. Dep’t of Justice*, 265 F.3d 83, 90 (2d

1 Cir. 2001). In order to warrant reopening, the new evidence must materially affect the outcome
2 of the case. *See* 8 C.F.R. § 1003.2(c)(1). In denying her applications for relief, the agency
3 determined that Kaur failed to establish past persecution or a reasonable possibility of future
4 persecution on account of a protected ground.

5 In support of her motion to reopen, Kaur alleged that country conditions in India have
6 changed due to the election of the Congress Party in the Punjab. While the materials submitted
7 by Kaur reflect a change in the prominent party in the Punjab region of India, they do not indicate
8 that the treatment of the Sikh ethnic group has changed significantly. Rather, they merely
9 document a continuation of the tension between Sikhs and other political parties that was
10 occurring in India at the time of her initial application, albeit under the watch of a different
11 political party. The BIA did not abuse its discretion in finding that Kaur failed to establish
12 changed country conditions that would materially affect the outcome of her claim.

13 _____For the foregoing reasons, the petition for review is DENIED. Having completed our
14 review, any stay of removal that the Court previously granted in this petition is VACATED, and
15 any pending motion for a stay of removal in this petition is DENIED as moot. Any pending
16 request for oral argument in this petition is DENIED in accordance with Federal Rule of
17 Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

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21 FOR THE COURT:
22 Roseann B. MacKechnie, Clerk
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By:_____